

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

76-1033

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PJS

To be argued by
JOSEPH I. STONE

United States Court of Appeals
For the Second Circuit

76-1033

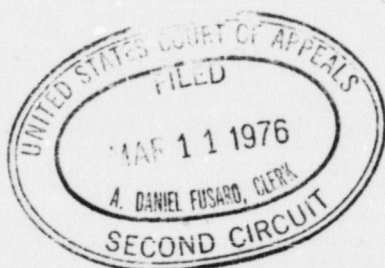
UNITED STATES OF AMERICA,
v.
RAYMOND ROBIN,
Appellee,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR
DEFENDANT-APPELLANT RAYMOND ROBIN

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA, :
Appellee, :

-against- :

76-1033

RAYMOND ROBIN, :
Defendant-Appellant. :
-----X

PRELIMINARY STATEMENT

Defendant-appellant, Raymond Robin, appeals from a judgment of conviction entered after plea before Hon. Constance Baker Motley rendered on the 9th day of January, 1976.

Defendant-appellant pleaded guilty to all three counts under indictment 74 Cr. 622 charging the defendant with one count of conspiracy and two substantive narcotic charges and on January 9, 1976, Judge Motley sentenced defendant Robin to 15 years on count one, 15 years on count two to run concurrently with the sentence of count one, and a 15 year sentence on count three to run consecutively to the other sentences, plus committed fines totaling \$75,000. The defendant is currently remanded.

Defendant-appellant's appeal is based on the illegality of the sentencing procedures, the severity of the sentence and other procedures which effectively denied the defendant of due process of law.

STATEMENT OF FACTS

In June, 1974, Raymond Robin, an ex-police officer and an active bailbondsman for Stuyvesant Insurance Company, was indicted in New York State Courts and in Federal Court. He was arrested at his home and after being fully warned of his constitutional rights, waived arraignment on both the state and federal indictments.

The government, working with the state authorities, was attempting to elicit his cooperation in the area of narcotic dealings and judicial corruption. Sometime in 1975, after Mr. Robin's cooperation was not forthcoming, he was brought for arraignment both in State and Federal Court.

The defendant-appellant was arguing certain legal matters in State Court during November of 1975. Prior to the time a State Supreme Court Judge had issued a decision, the defendant, on a previously set trial date, entered Judge Motley's courtroom and advised her that he (defendant Robin) wished to plead guilty to all three counts of the indictment. On November 12, 1975, Judge Motley advised the defendant and his lawyer that she was deferring decision on his application to plead guilty until November 25, 1975. The defendant in fact did plead guilty to all

three charges and subsequently under the state statute, the state indictment was dismissed.

Sentencing occurred January 9, 1976, and began at approximately ten o'clock and continued until after three o'clock in the afternoon. The government vigorously opposed Judge Motley's acceptance of defendant Robin's plea indicating very candidly that they wished to nolle prosequi the federal indictment and permit the state authorities to prosecute him in state court. Judge Motley granted him the right to plead to the indictment; refused the government's application to file a nolle prosequi and immediately after defendant Robin's plea, she remanded him pending sentence.

Indictment 74 Cr. 622 charged Robin with a conspiracy beginning February 1, 1974, and ending with the filing of the indictment which was June 20, 1974. Count two charged possession with intent to distribute one-half kilogram of heroin on March 19, 1974. Count three charged Robin with the possession with intent to distribute one-half kilogram of heroin on March 25, 1974.

The overt acts alleged in furtherance of the conspiracy included the March 19, 1974 sale and the March 25, 1974, sale and of the five overt acts, Robin was named in three: one for March 19th and two for March 25th, 1974. At the

time of sentencing attorney for Mr. Robin, Jack Cohen, indicated that he had seen the pre-sentence report but that he did not have it with him at the time he interviewed the defendant Robin (3R). The court indicated, "I do not know whether those matters are true or not and I do not intend to hold a trial here as to whether they are true or not", (3R). The judge further indicated that, "If he is guilty of some other crimes, they are not before me", (R). Mr. Cohen, defendant's attorney, introduced during the sentencing a transcript of a tape recording made when the defendant was arrested, over objections of Mr. Amorosa, who claimed he did not have an opportunity to look at it (9R). In arguing on the basis of this tape recording, the judge advised Mr. Cohen to move on to something else (10R). The tape recording, which is attached as part of the defendant's appendix, indicates that the officers at the time they arrested Robin for the allegations in the indictment at bar, indicated to him that they thought he was a minor person in the narcotics picture. Mr. Cohen also attempted to offer to Judge Motley certain reports by Agent Caffrey and exhibits in a State Huntley hearing (16R). Mr. Amorosa asked the Court to disregard them unless he had

an opportunity to look at them. After reading the report offered by Mr. Cohen, Mr. Amorosa referred to paragraph eleven relating to the defendant's cooperation with the government (21R) which Mr. Cohen indicated he didn't "think the court wanted to hear about today", (22R).

The judge also received at the time of sentence a letter from David Cunningham, Chief Trial Assistant, Office of Special Prosecution, State of New York, indicating that Mr. Cunningham thought Mr. Robin should receive a maximum sentence. The maximum sentence in this indictment would be forty-five years. Mr. Amorosa, in his colloquy before the judge, indicated that he felt the defendant Robin was a major violator and asked the court to take into consideration, "what we have to say also" (28R). Amorosa claimed to have "witnesses and documents in our possession that back the allegations up," (28R). After lengthy argument by Mr. Amorosa on page 30 and 31 where Mr. Amorosa referred to witnesses before Judge Cooper who would have testified against Robin, the judge stated on page 31R, "While on that basis I believe I should consider it as the evidence the government would have offered with respect to count one." The defendant was never given an opportunity to refute the alleged

allegations of Anthony Verzino that he (Robin) distributed multi-quantity kilograms of heroin. The letter of Mr. Cunningham was a summary of what he believed witnesses would say, what documents would show and what the tapes would show in connection with Robin's culpability.

After a luncheon recess, the court resumed at 2:15 P.M. and the United States Attorney, Mr. Amorosa, requested that Mr. Sterling Johnson say something. Mr. Sterling Johnson was the Special Prosecutor for the Special Narcotics Courts of the State of New York and is no longer an assistant United States Attorney as he was several years ago. Mr. Johnson asked the court to sentence the defendant, "to a maximum term on each count to run consecutively," (44R). Mr. Cunningham then gave a lengthy colloquy indicating that the court should make an example out of Mr. Robin and he claimed that the defendant should be given a substantial sentence because he refused to testify in court against someone else. Mr. Amorosa, at the end of Mr. Cunningham's statement, correctly predicted that Mr. Cohen would say that "Robin denies everything and he denies what we claim he is," (45R), and he further asked the

court to accept their nolle prosequi. Mr. Cohen further reiterated on page 46R that Mr. Robin has denied the allegations put forth against him by Anthony Verzino and the court never heard Verzino testify nor was Verzino cross-examined. Mr. Cunningham and Mr. Amorosa were not in agreement as to how many defendants were acquitted as a result of Verzino's testimony, and without actually interviewing the jury we don't know whether Verzino was believed, or whether it was Perna who swayed the jurors. The defendant himself stated that what was said about him at sentencing were basically lies (51R). The court clearly stated that she was considering Mr. Cunningham's letter in passing on sentence (54R). After listening to defendant Robin complete his statement to the court, Judge Motley stated,

"So in view of your background as a former police officer in the City of New York, and a bail-bondsman for fifteen years, I find it difficult to believe your assertion that you were simply aiding somebody by bringing two people together, and were not really involved in narcotics on a substantial scale."

Judge Motley then sentenced the defendant to fifteen years on count one, fifteen years on count two to run concurrently with each other and with respect to count

three, a sentence of fifteen years with the sentence to follow counts one and two, plus \$25,000 fine on each count. She made it very clear that the prison term, "thus imposed totals thirty years", (59R), and the fines were committed. The judge further stated on page 61,

"In your case particularly the sentence is deserved because you were a former New York City policeman whose duty it was to uphold the law. You have an opportunity that very few of us have to see what heroin has done to this city firsthand. And as a bail bondsman you had more opportunity to see people such as those who have been mentioned here who have reaped huge profits from the sale of narcotics, and for all of those reasons the Court has imposed the sentence that it has in your case."

It is the defendant's contention that the sentencing procedure deprived him of due process of law.

QUESTIONS PRESENTED

THE COURT VIOLATED RULE 32 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE AND DEPRIVED THE DEFENDANT OF DUE PROCESS OF LAW.

ARGUMENT

POINT I

While Appellate Courts have generally not reviewed the severity of defendant's sentence, it has been assumed that the reviewing court must insure to an individual defendant that the rudimentary notions of fairness are observed in the sentence process.

Townsend v. Burke, 334 U.S. 736, reversed a conviction where a "prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue" stating further that such result, whether caused by carelessness are decidedly inconsistent with due process and as such, the conviction cannot stand.

In this particular case, defendant Robin was given a consecutive sentence on counts 1 and 2 and although consecutive sentences have been approved in many narcotic cases under Gore v. U.S., 357 U.S. 368, where the courts consider them to be separate violations from one transaction, the Ninth Circuit Court Appeals, in U.S. v. Clements, 471 F. 2d 1253, set aside consecutive sentences where they showed that the statutory interpretation indicated that the court cannot impose consecutive sentences. The court quoted Prince v. U.S., 352 U.S. 329, when they stated;

"While reasonable minds might differ on this conclusion, we think it is consistent with our policy of not attributing to Congress, in the enactment of criminal statutes, an intention to punish more severely than the language of its laws clearly imports in the light of pertinent legislative history."

The Appellate Courts have also felt that any rigid sentencing procedure that deviates from treating an individual as an individual is inconsistent with due process of law and fair play.

The judge below indicated that anyone who possessed a half kilo of narcotics was a "major violator", therefore, seemingly adopting a rigid approach to the possession counts.

Circuit Courts of Appeals in many circuits, including this circuit, in U.S. v. Schwartz, 500 F.2d 1350, U.S.v. Rosner, 485 F.2d 1213, and U.S. v. Tucker, 404 U.S. 443, have had occasion to discuss the due process aspect as guaranteed in Townsend (supra). The Fifth Circuit in U.S. v. Espinoza, 481 F.2d 553, quoting U.S. v. Battaglia, 478 F.2d 854, permitted the vacation of the sentence because the judge relied on inaccurate information in assessing the sentence.

Some of the inaccurate information that Judge Motley assessed on behalf of Mr. Robin was,

- 1) The Cunningham letter
- 2) The value of his house
- 3) The statement of Sterling Johnson
- 4) The overall consideration that anyone "who is not an addict and possessed or was able to possess a half kilo of heroin was a major dealer".

The Fifth Circuit stated,

"At the time of sentencing, the trial judge stated that he was taking into consideration certain facts which he believed to be true. The defendant says they are untrue. On consideration of the motion, the judge said that he would

have imposed the same sentence even if the facts were untrue. Although this may be so, we think it is better to assure the defendant that the alleged untrue facts will not affect his sentence by permitting him a hearing at which he may seek to remove any lingering doubt the court may have had about the true situation. The court should then reconsider the sentence in the light of the true facts as found after hearing."

It is interesting that the Espinoza court also quoted this court, U.S. v. Malcolm, 482 F.2d 809.

This court is familiar with the American Law Institute Model Penal Code concerning standards to sentencing, alternatives and procedures as well as the many dissertations written by Judge Marvin E. Frankel including his comments in the University of Cincinnati Law Review, 1972. I will not repeat pertinent portions of the model sentencing code for the court.

In U. S. v. Tanner 471 F.2d 123 the court stated:"A single continuing conspiracy ...cannot be broken down...for the purpose of multiple punishments or multiple prosecutions".

In U.S. v. Rosner, 485 F.2d 1212, (1973), the Second Circuit remanded for resentencing on the basis that the trial court seriously misread the defendant's record and pronounced sentence on false assumptions. The failure to allow the defendant to effectively rebutt the court's misperception of his record then makes the error one of "constitutional magnitude."

In the Rosner case, it was hearsay statements

about the defendant's record made by the prosecution at the time of sentence which was responsible for the lower court's mistaken reading of the defendant's record and its violation of Rule 32, Fed. Rules Criminal Procedure.

In the present case, a similar fact pattern exists. At the time of sentencing, a New York City Assistant District Attorney, Mr. David Cunningham, went on the record with hearsay statements about the magnitude of the defendant's involvement in the narcotics trade. No less than 300 hours of tapes of incriminating evidence was said to be in Mr. Cunningham's possession. The defendant, so explicitly said Mr. Cunningham, was described as an important figure in the narcotics world with significant knowledge in both the corruption and narcotics areas. That Mr. Cunningham was allowed to introduce this hearsay was bad enough. In addition, however, he also gave misleading information, see page 49 of the day of sentence, where the Assistant U. S. Attorney found it necessary to correct Mr. Cunningham.

It is clear from the record of that sentencing day, p. 48-60, that the trial court was seriously mistaken about the defendant's particular kind of involvement in drugs and about the defendant's finances as a result of that involvement in the lucrative drug traffic.

When the defendant tried to correct the court that his home lot was purchased and his house built at a

combined cost of about \$90,000 dollars in 1966, and not at about \$180,000 dollars as the court thought, the court did not acknowledge that difference; rather it cynically questioned the current asking price of the home and property of \$235,000 dollars. Surely it is not unreasonable to believe that suburban property values in the New York area have increased two and a half times in the past ten years. The court disbelievingly questioned the ability of the defendant to "maintain a house in the value of about \$200,000 dollars."

That the defendant tried to detail his finances by explaining he has paid off in small amounts a loan of \$20,000 dollars four or five years ago, was to no avail.

Concerning the defendant's level of involvement in drugs traffic, Mr. Cunningham made his hearsay clear that the defendant was a major figure. And the trial court relied on that characterization, as is evidenced by the court's total disbelief that the defendant could not have acted as a go-between but instead had to make substantial money in drug dealing.

The court said, "It seems to me that the only way you get to know somebody like Anthony Verzino or Mario Perna or people that who you indicated supplied drugs to Alex Pulpas is to be involved with such people."

The court in a further non sequitur said ".....This crime was committed after the very severe penalties enacted by the New York State Legislature went into effect

which means that anybody involved in the narcotics traffic after that date is involved on a major scale....."

The court abruptly ended the defendant's effort to explain these two important factors: His level of involvement which formed the basis of his guilty plea, and his finances, which goes circumstantially to that level of involvement. As this court said in Rosner p. 1230, "unless counsel was given adequate opportunity to correct any misinformation.....we doubt that this spontaneous comment before sentence was adequate to afford the defendant his due."

POINT II

THERE WAS MANIFEST INJUSTICE IN THE GOVERNMENT'S PRE-SENTENCE PRESENTATION

Appellant respectfully submits that "presentation" in its sense of "selling" is the proper characterization of the government's position. The government was acting as advocate for the State of New York and for its own potential future indictments.

The government is under a duty to present a full and fair case against a defendant to fully protect society's rights. It is not an adversary advocate. There can be no right or precedent for the government saying of appellant, "if he cooperated we would have allowed him to plead" (P. 25). Can there be any question

of a defendant's absolute right to plead guilty subject only to a court's determination that certain standards of voluntariness are met? Such determination is for a court. Arrogating such right to itself is governmental overreaching.

Further, the government challenged the court's acceptance of appellant's guilty plea, not because it was improperly entered but because it was entered knowingly and voluntarily. This is a perverse, overreaching logic. The government called the plea a trick that precluded a plenary state trial and thus preventing the full story from being put on the record. What more can the government expect from a defendant than an unqualified plea of guilty to all counts in an indictment? Is it proper for the government to seek any more than it has charged? The government cannot contend, in all fairness, that the appellant had no right to choose between indictments in different forums. No citations are provided to support the proposition that a defendant may not avail himself of a defect in the government's strategy without the government becoming "personally" aggrieved. Were appellant to have been tried first in the State Court, there was still the available option to the government to prosecute the indictment at bar (p.29).

It is wholly improper for the government to use its own defective strategy as a reason for demanding increased punishment to appellant.

In it's zeal to "get" the appellant, the government vouched for the validity and truth of its alleged witnesses and exhibits as to appellant's role in the narcotics business, beyond that charged in the indictment (P.33,45). Such action is improper at trial and should be no more proper at the pre-sentence hearing.

Mr. Cunningham, in his affidavit (admitted over objection) and testimony charged alleged narcotics activities of appellant becoming known to the government subsequent to the hearing (p. 39,40). No explanation was offered as to why the government did not seek a superseding indictment to include such alleged crimes. It is improper for the government now to seek to enhance appellant's punishment for such uncharged crimes. Appellant should not be punished more severely because of government neglect.

The government made much ado of the fact that appellant was not jailed for some twenty months while he partially cooperated. This contention was intended obviously to preclude any claim for consideration because of such cooperation. This contention is an improper

overreaching for two basic reasons. First, appellant has not asked for such consideration and therefore it is not relevant. Second, appellant, like any other charged defendant, was out on bail. Neither reason can support the government's demands for an enhanced sentence.

The government claims it was defrauded (p.33) by the less than complete cooperation of appellant. A defendant is under no legal duty to cooperate. Nor may such non-cooperation be grounds for demanding an increased sentence, (U.S. v. Rogers, 504 F. 2d 1079, rehearing and rehearing en banc denied 2/4/75; In re Grand Jury Proceedings v. U.S., 509 F. 2d 1349, 1351.)

It is submitted that contrary to the teaching of U.S. v. Rodriguez, 498 F. 2d 302, the government herein, in effect was pressuring the appellant to confess to additional crimes under the forceful, almost violent, threat of the overwhelming allegations in its presentation for the maximum allowable sentence. In Woosley v. U.S., 478 F. 2d 139 (CA 8 1973), this court sitting en banc reversed a sentence as excessive, stating at 147 as follows:

"We hold that we possess the power to review the severity of a criminal sentence within narrow limits where the court has manifestly or grossly abused its discretion. This is such a case. The severity of the sentence shocks the judicial conscience."

In summary, the government was not impartially objective. It did not simply present relevant facts to supplement the pre-sentence probation report. The government was angry and frustrated and its arguments, therefore, went beyond the bounds of fair play and due process. How much all of this entered into the court's sentencing decision cannot be evaluated. It had the inherent potential for such influence. Such potential for injustice is reviewable (U.S. v. Espinoza, supra; U.S. v. Rogers, supra; U.S. v. Hartford, 489 F. 2d 652, 654.)

POINT III

THE COURT OMITTED KEY CONSIDERATIONS IN ITS SENTENCING PROCEDURES

No mention was made in the record of the effect of the sentence on appellant's health and family. These are proper factors for explicit consideration. Appellant has had a heart attack since the sentencing. The present sentence, if permitted to stand, may be in actual fact a life sentence.

The court further considered appellant's work record as a policeman and bail bondsman as strictly negative. The appellant should have known better and therefore must be more severely punished. Retribution not rehabilitation is the only operative factor. The court did not consider, apparently, that a prior clean record

should be a mitigating not an aggravating factor in sentence severity (U.S. v. Johnson, 507 F. 2d 826, 830; Williams v. N.Y., 337 U.S. 241, 245.) To carry such determination to its logical conclusion, a first offender may be penalized more severely than an habitual criminal because he should have known better. If an ex-policeman and bail bondsman must be punished more severely, shall a bank president be punished more severely than a teller for a similar embezzlement? Shall it be the law that a higher legislative executive or judicial officer be sentenced more severely than a lesser official for the same crime?

The rule has been expressed sufficiently often that the punishment should be individualized and of a type and extent appropriate for a particular individual (U.S. v. Johnson, 507 F. 2d 826.)

The court could not utilize the presentence report to supply proof of guilt, Russell v. U.S., 507 F. 2d 1029.

CONCLUSION

THE SENTENCING OF DEFENDANT-APPELLANT
ROBIN WAS NOT CONDUCTED IN AN IMPARTIAL
ATMOSPHERE. MR. CUNNINGHAM AND MR. JOHNSON
WERE NOT "PROFESSIONAL NEUTRALS" AND THE
COURT ERRED IN PERMITTING THEM TO SUBMIT
HEARSAY LETTERS AND STATEMENTS.

IN THE INTERESTS OF JUSTICE, THIS
CONVICTION SHOULD BE REVERSED SOLELY FOR
RE-SENTENCING UNDER THE DOCTRINE OF MAWSON
V. U.S., 463 F. 2d 29 AND THE CASE REDRAWN
TO ANOTHER JUDGE FOR SENTENCING.

Respectfully submitted,

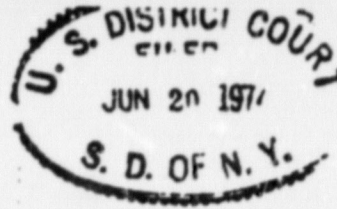
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

INDICTMENT

74 Cr.

RAYMOND ROBIN a/k/a "Railroad",
a/k/a "Rail", a/k/a "R.R.",
CHARLES DANIELS, JANE DOE #1 and
JANE DOE #2,

71 CR. 622

Defendants.

The Grand Jury charges:

1. From on or about the 1st day of February, 1974 continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, RAYMOND ROBIN a/k/a "Railroad", a/k/a "Rail", a/k/a "R.R.", CHARLES DANIELS, JANE DOE #1 and JANE DOE #2, the defendants and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about March 19, 1974, the defendant RAYMOND ROBIN received approximately \$10,000.
2. On or about March 19, 1974, the defendant JANE DOE #2 delivered a package containing approximately one-half kilogram of heroin.
3. On or about March 25, 1974, the defendant RAYMOND ROBIN received approximately \$4,500.
4. On or about March 25, 1974, the defendant RAYMOND ROBIN received approximately \$12,500.
5. On or about March 25, 1974, the defendant CHARLES DANIELS entered 2084 Eighth Ave, New York, N.Y.

(Title 21, United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

On or about the 19th day of March, 1974 in the Southern District of New York, RAYMOND ROBIN, a/k/a "Railroad", a/k/a "Rail", a/k/a "R.R.", CHARLES DANIELS, JANE DOE #1 and JANE DOE #2, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

THIRD COUNT

On or about the 25th day of March, 1974 in the Southern District of New York, RAYMOND ROBIN, a/k/a "Railroad", a/k/a "Rail", a/k/a "R.R.", CHARLES DANIELS and JANE DOE #2, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 821, 841(a)(1) and 841(b)(1)(A).)

Gerard J. Treanor
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

RAYMOND ROBIN a/k/a "Railroad",
a/k/a "Rail", a/k/a "R.R.",
CHARLES DANIELS, JANE DOE #1
and JANE DOE #2,

Defendants.

INDICTMENT

(21 U.S.C. §§ 846, 841(a)(1),
841(b)(1)(A).)

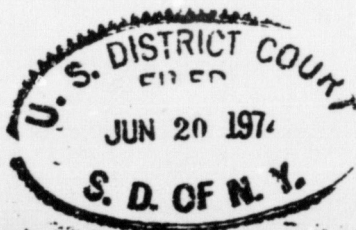
PAUL J. CURRAN

United States Attorney.

A TRUE BILL

Foreman.

FPI-SS-2-19-71-20M-6950



20 1974

prosecution

& B/W's ordered as to
defts

1-1-75 Indictment ordered Yancey

5-12-75 Pleaing by Pierce J
Yancey J

11-75 - ALL Defs - pleading at 10:30 AM.

12/75 - Raymond Robin (no appearance by deft. or counsel) B/W ordered Not guilty plea directed.
Charles Daniels (no appearance by deft. or atty.) Not guilty plea a to be entered.
Entire case assigned to Mokey for all purposes. Daskin

JUDGE MOTLEY

74 CRIM. 622

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
	Daniel P. Kett, Sr. Atty
	264-6374
RAYMOND ROBIN a/k/a "Railroad", a/k/a "Rail", a/k/a "R.R." - 1-3	Domino House
CHARLES DANIELS-1-3	
JANE DOE #1-1-2	For Defendant:
JANE DOE #2-1-3	

ABSTRACT OF COSTS (07)	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBUR
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court, 21					
Witnesses: 846, 841, 812, (a)(1) (b)					
Consp. to viol. Fed. Narcotic Laws. (Ct. 1)					
Distr. & possess. w/intent to distr.					
Heroin, I. (Cts. 2&3)					
(Three Counts)					

DATE	PROCEEDINGS
6-20-74	Filed indictment and ordered sealed. B/W ordered. Knapp, J.
5-1-75	Indictment ordered unsealed. Pierce, J.
5-12-75	Pleading adjourned to 5-19-75---Hyatt, J.
5-19-75	All defts. pleading adjourned to 5-27-75 at 10:30 a.m. Gagliardi, J.
5-27-75	Def. Raymond Robin not present (no Atty.). B/W ordered. Not guilty plea directed.
	Def. Charles Daniels not present (no Atty.). Not guilty plea directed to be entered. Gagliardi, J. Case assigned to Motley, J. for all purposes.

(52)

— OVER —

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFEND
5-27-75	RAYMOND ROBIN - Bench warrant issued.		
6-3-75	RAYMOND ROBIN - Appearing B/W is ordered vacated. Bail fixed at \$10,000 P.R.B. ... MOTLEY, J.		
6-4-75	R.ROBIN) Filed notice of readiness for trial... C.DANIELS)		
6-20-75	RAYMOND ROBIN - Filed affdvt. & notice of motion for a bill of particulars and discovery and inspection..Etc.		
6-20-75	RAYMOND ROBIN - Filed affdvt. & notice of motion to dismiss the indictment.		
6-24-75	R.ROBIN - Filed P.R.B. without security in sum of \$10,000.....		
11-25-75	R.ROBIN - Filed petition to enter plea of Guilty..Deft & atty. present..Withdraws p of N.G. and now PLEADS GUILTY to Cts.1,2 and 3, Sentence adjd to 1-9-76, 11:00 P.S.I. ordered..Deft remanded (No Bail)...		
11-26-75	R.ROBIN - Filed notice of motion for leave to enter plea of Guilty to all counts of indictment.		
12-9-75	R.ROBIN - Filed notice of motion for release of deft pending sentence...		
12-9-75	R.ROBIN - Filed memorandum in support of defts motion for release pending sentence		
12-9-75	R.ROBIN - Filed affdvt. in support of release pending sentence.		
12-11-75	JANE DOE #1) Filed order for issuance of bench warrants..... JANE DOE #2) Motley, J.		
12-15-75	JANE DOE #1) Bench warrants issued.. JANE DOE #2)		
12-16-75	RAYMOND ROBIN - Filed memorandum opinion #40345 By motion dtd. 12-9-75 and filed this Court 12-9-75 deft has moved for an order releasing deft pending sentence in scheduled for Jan.9-76. SAID MOTION IS DENIED.....Motley, J. n/a		

(la)

- See Page 3 -

Defendant's Robin Exhibit 1 In Evidence
(dated January 9, 1976)

On April 1, 1974, following his arrest in C1-74-0206, SC1-4-0069 indicated a willingness to cooperate with this office in providing intelligence and initiating cases against major narcotic traffickers in Region 2, as well as providing intelligence and initiating cases relating to corruption within the criminal justice system.

Since April 1, 1974, SC1-4-0069 has penetrated the ALfred CATINO organization

(C1-74-0206) and has identified CATINO as the incarcerated Anthony VERZINO's replacement in the narcotics traffic. Additionally, the informant has indicated CATINO to have been his (the informant's) source of supply and admitted that on one occasion, he purchased five kilograms of heroin from CATINO, et al.

After having provided this intelligence, SC1-4-0069, equipped with an electronic listening device, provided by the undersigned, made payment of \$4,000.00 to CATINO as a partial payment for a previously received exhibit. Further, CATINO requested that the informant procure 1,000 ounces of quinine, which was to be utilized as diluent material in their narcotic trafficking.

Subsequently, after having been provided with the aforementioned quinine by DEA Agents, SC1-4-0069 was instrumental in making arrangements for the delivery of the requested diluent material, which was ultimately transferred into the custody of CATINO associates John DOE @ TONY and well known Region 2 trafficker Matty MADONNA.

SC1-4-0069 has indicated that CATINO, currently on appeal status, has requested him to provide a seaman courier for the smuggling of narcotics into the United States. This request is consistent with CATINO's modus operandi outlined in C1-72-0264. This investigation continues.

It should be noted also, that SC1-4-0069 was directly responsible for the location and apprehension of fugitive Anthony TORRES (C1-71-0191) a defendant recently convicted at the Southern District of New York in a major smuggling conspiracy case. This defendant had been sought by DEA for a considerable period of time.

SC1-4-0069 has also provided intelligence relative to murder contracts on three Federal informants, Ferdinand HUNT, Barry LIPSKY and James CULHANE. As a result, these murders have all been aborted.

During late May or early June, 1974, S/A Phillip Hayward of the Long Island District Office was viciously assaulted by three negro males who relieved him of his service revolver, badge, pocket commission and several personal items, including Government gas credit cards. On June 5, 1974, SC1-4-0069 retrieved S A Hayward's official identification, including badge and Government credit cards.

During the past 90 days, SC1-4-0069 has been debriefed on four occasions by George Charros of the DEA Integrity Unit, SDNY. On these occasions, the informant has provided leads relating to unethical and illegal activities of criminal attorneys Gino Gallina, Robert Schwartz, Gerry

Feldman and George Kiernan. It should be noted also, that SC1-4-0069 has indicated that Alfred CATINO or a close associate of CATINO, has an investigative source of information inside DEA and/or the NY Joint Task Force.

On July 28, 1975, at approximately 5:40 P.M., SC1-4-0069 telephonically contacted Assistant Regional Director Ronald J. Caffrey and provided the following information: A Harlem resident, one Warren SIMMS, purported to be a narcotic trafficker, acting in concert with one Malcolm HARRISON, is involved in a scheme bilk New York City and the Federal Government given out of substantial amounts of money, specifically designated for social and welfare programs in Harlem.

SIMMS, a supervisor in the Upper West Side Corporation, located at 760 St. Nicholas Avenue, New York City, have provided bogus payroll lists to the Human Resources Administration which have resulted in the issuance the city of several thousand dollars in checks ostensibly intended as salaries for underprivileged/ghetto youths working in community projects.

The first summer issuance of these checks has been made this week so it will be another two weeks or more before all checks are cashed and returned to the city, whereupon physical evidence and hand writing samples can be taken. City government agencies should have the names and addresses on the alleged employees at this center, thereby providing a state or federal grand jury with a number of suspects and witnesses.

According to the informant, the signatures on these checks are forged by SIMMS et al and cashed with little or minimal payment to designees who are not actually employed. In some instances the names on the checks are non-existent. Certain names are bonifide and some of these individuals have no knowledge that their names are being used while others are permitting utilization of their names for a percentage of the checks.

Preliminary indications are that the UPPER WEST SIDE CORPORATION maybe funded jointly on a percentage basis by both the federal and city or state government.

at New York

On April 3, 1974, at approximately 10:00 p.m., S. J. Joseph and the undersigned met and conferred with SC1-4-0069 in the vicinity of 152nd Street, the Grand Concourse, Bronx, New York. At this time the Informant indicated that underworld elements had placed a contract on the life of government witness Barry LIPSEY, and in fact had allegedly located LIPSEY in the Miami, Florida area. (This information was subsequently verbally reported to Special Agent Joseph Lore, Region 2. The source of this information concerning the "contract" was, according to SC1-4-0069, Alfred CATINO. SC1-4-0069 further indicated that he had met CATINO on 115th Street in East Harlem on the previous evening, at which time CATINO, alerted over the recent arrests in the Anthony VERZINO case (CI-73-0529) conducted a search of his (the Informant's) person before entering into conversation with him. While in conversation with CATINO, a male Italian arrived in the vicinity driving a brown Buick, whom CATINO described as a \$200.00 a week "stool pigeon for the feds". Also during this conversation SC1-4-0069 learned of CATINO'S intention to furnish bail for Suzie VERZINO and further that there was a contract out on the life of SC1-3-0237 for his participation in CI-73-0529. At this time CATINO indicated to the informant that he was optimistic concerning his (CATINO'S) appeal.

According to SCI-4-0069, there was a growing suspicion among underworld elements that Schwartz was or had cooperated with Special New York State Prosecutor Morris L. Jaffe. This suspicion was based on Schwartz's retention of his right to practice law in New York State despite criminal activity and offenses uncovered by local authorities.

The Informant also indicated that he (SCI-4-0069) was assisting attorneys in negotiating a low bail for well known Region 2 violator Nicholas BARKS, currently being questioned in connection with the murder of a West Manhattan male. SCI-4-0069 indicated that BARKS had made it known through intermediates that he (BARKS) would surrender if he could be assured of a reasonable bail.

SCI-4-0069 repeated his assertion that convicted defendant Alfred CATINO, currently free on appeal bail, had learned of the whereabouts of government witness Barry LIPSKY, an individual who had been earmarked for termination by underworld elements. Further, CATINO's intimated to the informant that he (CATINO) planned to use the claim that LIPSKY was a "paid informant" as a tactic in gaining an appeal in his case.

SCI-4-0069 then identified two of CATINO's underlings, alias BUCK (tentatively identified as Eutch LARONE) and alias Tony as individuals with no known criminal record who handled most of CATINO'S transactions. Further, SCI-4-0069 described CATINO'S source as an older man who had never been arrested on narcotic charges.

The informant indicated that in recent months CATINO had demonstrated paranoia concerning police surveillance, and following the arrest of CATINO'S associates in early April, had accused the Informant of being "hot" and refused to furnish the CI with a telephone contact number. However, CATINO agreed to meet with the Informant on April 13, 1974 at Baxter Street, New York City, to further discuss and finalize arrangements for a quinine transaction.

SCI-4-0069 indicated that there was suspicion among underworld elements that Attorney Edward Geller was cooperating with authorities. Further, SCI-4-0069 indicated that fugitive/bail bondsmen Jack STEIN had a sister and other relatives in Plainville, Long Island with whom he communicated on a regular basis.

SCI-4-0069 indicated that there was a contract out on the life of SCI-3-0237 for his participation in CI-73-0520. The Informant further revealed that VENTURA'S attorney, Gerald Goldman, was not being paid on a regular basis by his clients and further asserted that defendant Suzie VENTURA planned to enter a psychiatric clinic as a ploy to avoid federal prosecution.

SCI-4-0069 then indicated that Raymond MARQUEZ aka SPANISH RAYMOND was to be released from federal prison later that year and because of his (the Informant's) relationship with MARQUEZ, he (SCI-4-0069) would be in a position to procure more viable criminal intelligence. He did identify a source known as [redacted], Carmine [redacted] and [redacted] as his (SCI-4-0069) source of criminal information.

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On April 16, 1974 and again on April 19, 1974 at approximately 9:00 a.m., Sgt. Joseph Rollo and the undersigned met and conferred with SCL-4-0069 in Little Neck, New York.

At this time the Informant was once again questioned concerning his knowledge of security leaks in the federal or local law enforcement establishment, to which the Informant opined that New York Attorney Mathew Salto quite possibly had access to a source, in view of the attorney's apparent awareness of impending indictments in the state court. According to SCL-4-0069 Salto appeared to be in possession of indictment information before the said indictments were revealed or before arrests were effected. The Informant also indicated that Attorney Zelig Zarefesky was an attorney of similar ilk.

During this meeting Group Supervisor Caffrey questioned the Informant concerning the whereabouts of Anthony TOLLES - CI-71-0191, DA-4-11. SCL-4-0069 provided the telephone number concerning the alleged whereabouts of fugitive Shelton COTRES.

During the interview, SCL-4-0069 indicated that there was a contract out on the life of federal defendant Ferdinand MATO. This contract was allegedly issued by federal defendant Joseph OSBORN as a retaliatory measure for MATO'S suspected cooperative status.

SCL-4-0069 indicated a familiarity with Attorney Robert Schwartz and his wife, Alice, an ex-convict, who the defendant described as narcotic traffickers and as being associated with the late John J. Casella, a well known New York City figure.

RE: Cooperative effort made by SCL-4-0069 on May 9, 1974

Reference is made to all previous memoranda concerning Alfred CATINO.

On Thursday, May 9, 1974 SCL-4-0069 under the direction of DIA and AYD enforcement personnel furnished approximately 500 grams of quinine to Alfred CATINO et al. During this operation SCL-4-0069 furnished a key to Alfred CATINO for a rented vehicle containing the desired illicit material. Subsequently CATINO, John DOE (with alias) and well known New York violator Betty HYWETA took receipt of this contraband and transferred it to the custody of a black male, John DOE #2. Subsequent intelligence provided by both SCL-4-0069 and corroborated by Government Witness Anthony VIRELLA indicated Betty HYWETA to be the source of heroin supply for well known heroin violator Nicky BARNES. SCL-4-0069 described the aforementioned transaction by CATINO as an accommodation to an associate. Several days following his transaction SCL-4-0069 received \$6,500.00 in payment for the aforementioned quinine which he (SCL-4-0069) furnished to Sergeant Joseph Rollo and Group Supervisor Ronald Caffrey for evidentiary purposes. The purpose of the aforementioned transaction was to identify CATINO's source of supply and associates, to locate his cache of narcotics, to re-affirm the informant's credibility with CATINO et al. to somewhat defray a past debt to CATINO by the informant and to reduce the price of future purchases of heroin from CATINO et al. by the informant.

The aforementioned quinine transaction was authorized by United States Attorney, Southern District of New York.

REPORT OF INVESTIGATION

(Continuation)

DATE

PAGE

OF

FILE NUMBER

CATINO, Alfred et al

61-74-0236

61-74-0236

SYNOPSIS

The Informant was then instructed to attempt to initiate a crew against Peter J. PALERIO aka Pete M... brother of the informant Joseph J. PALERIO (Joseph M...). This plan included utilizing the informant's acquaintanceship with J. PALERIO's paragon, who resided in an apartment at Elmer Street, a building allegedly owned by the J. PALERIOS.

Additional information was provided by 61-4-0060 concerning defendant Alfred CATINO, the subject of which will be reported in a subsequent memorandum.

Information concerning contracts on the lives of informants and suspected informants Freddy M... and Harry LIPNEY was verbally and in written form reported to ASAC Joseph Nesland, AND Carl Jackson (G: M... (G: Harry LIPNEY) and to Agent Joseph Lore, RIU, Region 2. SC1-3-0237 was removed from the immediate area of New York City and is currently in the protective custody of Region 2 Agents and NYPD Officers.

depts or B for ID
057 11-3-75

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OFFICE OF PROSECUTION
SPECIAL NARCOTICS COURTS

26 FEDERAL PLAZA NEW YORK, N.Y. 10007

STERLING JOHNSON, Jr.
Special Assistant District Attorney

ROOM 437
(212) FR 4-136

December 9, 1975

Honorable Constance Baker Motley
District Court Judge
Southern District of New York
Foley Square
New York, New York 10007

Dear Judge Motley:

I am an Assistant District Attorney in New York County and am currently assigned as the Narcotic Bureau Chief in New York County; and as the Chief Trial Assistant to Sterling Johnson, the New York City Special Narcotics Prosecutor. I have been in charge of the investigation and trial of Raymond Robin since its inception on November 29, 1973.

This letter is submitted as a presentence memorandum in order to more fully apprise you of the facts and circumstances relevant to the sentencing of this particular defendant.

I. FACTS:

A. The Malizia, Verzino, Perna Conspiracy.

Ray Robin was a multi-kilogram heroin customer of Anthony Verzino, Ernest Malizia and Mario Perna. The latter two began purchasing and distributing kilogram quantities of heroin in February, 1973. By August, 1973, the business was worth one million, two hundred thousand dollars (\$1,200,000) in accounts receivable, cash, and heroin on hand. Perna and Malizia bought in excess of five hundred thousand dollars (\$500,000) of thirty percent (30%) pure heroin from the Joseph Magnano, Frank Pallatta and Richard Bolella organization. Initially, the heroin cost in excess of \$25,000 per kilogram, but as Malizia and Perna's buying power grew, the price was reduced to \$22,000 per kilogram. Six regular customers were developed who would buy multi-kilogram quantities of heroin. One customer, Frank Lucas, was consigned heroin in five kilogram lots at \$28,000 a kilogram and by August, 1973 had paid Malizia and Perna in excess of \$800,000.

Anthony Verzino was added to the partnership in late August because of representations that he could make more money for the partnership by supplying a better quality of heroin and recruiting more steady kilogram customers. In the Fall of 1973, the partnership prospered. Old customers were regularly serviced and the Magnano organization continued to supply as much heroin as was needed. Additionally, Verzino fulfilled his promises by obtaining five kilograms of pure heroin for \$250,000 from Anthony Delutra and bringing five new customers. Among the new customers were Raymond Robin and James Culhane.

B. Robin and Culhane

Verzino had known Robin since 1962 as an ex-New York City Police Officer who had worked for the Raymond and Chili Marquez gambling operation while on the force and after retiring. Verzino knew that in addition to his working in their gambling operation the Marquez's had set Robin up as a bailbondsman in 1960. Additionally, Verzino knew that Robin, like many other wealthy policy operators, had invested profits in the mid-1960's in the narcotics boom. Verzino's knowledge was founded upon his personal supply of multiple kilograms of heroin to many of these gamblers.

Thus, on August 27, 1973 when Verzino was in 100 Centre Street on another matter and met the ever-present Robin, Verzino spoke with Robin about narcotics. Robin asked if Verzino could get heroin and Verzino replied that he expected to in the future and would keep in touch. Throughout the Fall Verzino and Robin continued to barter. Robin offered \$26,500 per kilogram while Verzino held steady at \$29,000. To Verzino, Malizia and Perna there was no point in selling to Robin at \$26,500 per kilogram when Lucas and the rest of the customers were paying \$28,000 and more per kilogram regularly.

However, after Verzino, Malizia and Perna had spent \$250,000 on the five kilogram Delutro deal they were short of cash. It was felt that the few thousand dollars loss in profits on each kilogram given to Robin could easily be made up after diluting and selling their new supply of pure heroin.

On November 27, 1973, Verzino met Robin at the latter's bail bond office at 81 Baxter Street. Arrangements were made whereby Robin would have a 1973 brown Cougar left in front of Ponti's Restaurant, 231st Street and Broadway, with keys in the ignition at 5:00 p.m. Verzino would take the car and put two kilograms of heroin in it. Robin would then pay the \$53,000 owed in the next few days. Verzino then left Robin's office and went to Forlini's for coffee. A few minutes later Robin appeared with James Culhane. Verzino had known Culhane for many years and jokingly treated him like his Irish godson. Verzino also knew Culhane as an addict who made his living by robbery and/or selling drugs. Robin urged Verzino to give Culhane some heroin to sell so that Culhane could pay back Robin money

December 9, 1975

Culhane owed. Culhane explained to Verzino that Robin had failed to return bail money that he had put up on two cases in 1967 and 1968. Therefore, when Robin came to Culhane to buy several kilograms of heroin for Walter Grant, Culhane had taken Robin's \$50,000 and vanished. Culhane felt that since Robin had "ripped" him, he was justified in "ripping" him. Verzino, without mediating the argument, agreed to give Culhane a half kilogram of heroin.

Verzino then took Culhane to the Old Stone Jug Pub, 3713 Riverdale Avenue, left, and then brought back Perna and a half kilogram of heroin. Culhane was instructed to meet Verzino three days later at Ponti's in order to make his first partial payment. Several hours later Verzino and Malizia observed Alex Pulphus leave a 1973 brown Cougar in front of Ponti's. Verzino took the Cougar to a nearby Waldbaum's parking lot and transferred the two kilograms of heroin from his own car to the Cougar. Verzino returned the Cougar to the restaurant and observed Pulphus re-enter the Cougar and drive out of the area.

On November 29, 1973, Culhane was arrested in possession of his half kilogram of heroin. Dizzy from the after effects of a car accident he attempted to persuade the occupants of a cab to vacate. As the cab driver fled, the police arrived and found Culhane in the front seat attempting to start a keyless cab. Culhane was charged with an A-I felony and agreed to cooperate with the Special Prosecutor's Office and a task force of city and federal officers. Culhane then met Verzino, Perna, Malizia, Frank Caravella, Susan Verzino, Ray Robin and others thirty-one times between November 29, 1973 and March 16, 1974 for the purpose of delivering money (18 deliveries = \$49,000) and receiving three further consignments of half kilograms of heroin. Culhane used "buy money" supplied by the Special Narcotics Prosecutor's Office and wore recording devices at each meeting. All four of the half kilogram packages were vouchered into the New York City Property Clerks Office. During these conversations Malizia, Perna and Verzino made many references to their other customers, including Robin, and their sources of supply. Culhane phoned Robin the day after he was arrested to have Robin find Verzino and put off the scheduled first payment for the initial half kilogram. The conversation was recorded, as was Verzino's subsequent call back.

During the first week of December, after Robin had finished paying for the first two kilograms of heroin, he ordered three more. The delivery was accomplished in the same manner as the first sale. The price of \$26,500 per kilogram remained the same and periodically Perna and Verzino would go to 81 Baxter Street to collect money from Robin. On one occasion, Robin ordered ten pounds of manita (heroin dilutant) from Verzino and Perna.

December 9, 1975

On December 18, 1973, Ernest Malizia was identified as a federal fugitive (Malizia had been using the name of Harry Lupes) and was arrested. After his arrest Verzino and Perna went to Malizia's apartment and recovered cash and the partnership's written accounts. These records were subsequently recovered and list Robin's name on a cash flow sheet and on an account receivable page. A handwriting expert has identified these sheets as being Ernest Malizia's handwriting.

During the first week of January, Verzino consigned two kilograms of heroin to Robin in the same manner as before. Verzino was helped by a onetime customer, Frank Caravella, who he was grooming to take Malizia's place. Robin continued to make partial payments of his debt throughout January. At the end of January Perna and Verzino discussed making Robin a full partner. Lucas was substantially in arrears (in excess of \$300,000) and Robin appeared to be a good payer. No agreement was reached as a rift had developed between Perna and Verzino. However, Verzino on his own agreed with Robin that if Robin let him borrow \$24,000 he would get Robin purer heroin. Verzino further promised Robin that instead of just giving him 32 ounce kilograms (his normal pattern) he would take the three ounce overage from the real kilogram and accumulate it until it was sufficient quantity for Verzino and Robin to split the profits.

Verzino then met Anthony Soldano through Patsy Malizia (Ernie's brother; still a federal fugitive) and purchased three kilograms of pure heroin for \$150,000. Robin's \$24,000 was added to monies Verzino, Perna and Caravella accumulated from other customers.

On February 1, 1974, Perna was arrested in New Jersey while selling eight kilograms of heroin to Joey Candella and a D.E.A. undercover agent. Prior to the sale, Perna had, without Verzino's knowledge, made the eight kilograms out of 1 1/2 kilograms of pure heroin. At the time of his arrest Perna had a customers list with Robin's name on it.

After Perna's arrest, Verzino, fearing apprehension, went into hiding for awhile. In the second week of February he transferred two kilograms of heroin to Robin and Pulphus. In mid-February he took Frank Caravella in as a working partner and proceeded to build a new heroin stash in apartment 4J, 1130 Pelham Parkway South. On February 23, 1974, Verzino met Robin at the Pathmark parking lot, 410 West 207th Street. Robin handed Verzino \$20,000 owed on a previous consignment and Verzino transferred to Pulphus's waiting Cougar three kilograms of heroin.

Previous to February 23, Robin stated that he had new Detroit customers who needed "purer goods." Verzino and Caravella mixed a special package of 2 kilograms and this also was transferred to Robin in the Pathmark parking lot. Robin passed the package to two unknown males who in return gave Robin a brown paperbag containing \$55,000 as partial payment for the heroin. Robin contacted Verzino the next day to tell him that his Detroit people were pleased with the heroin and would buy more on Monday.

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On Monday, February 25, 1974, Verzino and Caravella bought a large piece of plastic to use as a heroin "cutting" board. As they were entering 1130 Pelham Parkway South they were arrested. A subsequent search of apartment 4J (pursuant to a search warrant) revealed in excess of 26 pounds of heroin, 34 pounds of diluting powder, 2 pistols, a scale and 2 pen guns secreted in a hidden compartment in the closet. Among the packages of heroin were six which had the following labels: (1) "5 oz. Railroad", (2) "RR Special", (3) "1/4 Railroad", (4) "1/2 Railroad", (5) "1/2 Railroad", and (6) "Special 3 to 1 Rail." Additionally, ledgers and address books were found in the apartment and in possession of both Verzino and Caravella which mentioned Robin's name, his phone number, amounts owed and amounts of heroin in various diluted forms on hand. Further, a handwriting analysis of the labels, ledgers and address books indicated that either Verzino or Caravella wrote these items.

The day after his arrest Verzino sent word to Robin that of the monies Robin owed he was to pay Jerry Feltman Esq. \$15,000 as a retainer and give \$10,000 to Susan Verzino to be disbursed equally among Verzino, Perna and Malizia's wives. Culhane and Susan Verzino visited Anthony Verzino in Sing Sing and Anthony Verzino gave further directions about collecting monies owed. He suggested that Susan tell Alfred Catino a/k/a Herbie that Robin was available as a customer. Several days later Robin told Susan Verzino that he was doing business with Catino.

C. The Robin-Culhane Sales

Robin still claimed that Culhane owed him money from the 1968 Walter Grant incident previously mentioned. Culhane while not conceding the point, on March 19, 1974 suggested that Robin sell him 1/2 kilogram of heroin so they both could make some money. Robin agreed at a price of \$14,500 per 1/2 kilogram. Later on March 19, 1974, Culhane paid Robin \$10,000 towards 1/2 kilogram at 2076 8th Avenue and was directed by Robin to see Charles Daniels for delivery. That same day Culhane met Daniels and two unknown females and received 1/2 kilogram of heroin.

On March 25, 1974, Culhane paid Robin \$4,500 owed on the first package and \$12,500 towards a second half kilogram of heroin. Again Robin directed Culhane to meet Daniels for delivery of the heroin. Daniels later that same evening supplied Robin with 1/2 kilogram of heroin.

All of the funds used to purchase heroin from Robin were supplied by the Office of the Special Narcotics Prosecutor. Culhane wore a recording device at each of his meetings with Robin and Daniels.

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D. Robin's Post Arrest Statements

Robin was arrested on April 1, 1974 and after knowingly and intelligently waiving his Miranda rights agreed to cooperate.* During Robin's debriefing he stated that Verzino had referred him to Alfred Catino and that he had just completed a \$250,000 five kilogram heroin deal with Catino. Robin further stated that the heroin sold Culhane had been obtained from Verzino. Robin also admitted that he was chided by Catino for bringing Culhane, an informant, to the Verzino organization.

E. Related Convictions

In United States v. Magnano et al., 75 Cr. 687, Joseph Magnano, Frank Pallatta, Richard Bolella, Anthony Delutro, Anthony Soldano and Frank Lucas were tried and convicted for the above-described conspiracy and substantive counts. Magnano and Pallatta received two 30 year concurrent terms, Delutro received two 25 years concurrent terms, Bolella received 20 years and Soldano fifteen. Lucas's sentence is still open pending the outcome of his trial on another case. Mario Perna and Anthony Verzino have plead guilty to numerous state and federal counts and are awaiting sentence. Ernest Malizia (as the Court must well know) escaped West Street and is still at large. Frank Caravella plead guilty to state conspiracy and substantive sale counts and received concurrent sentences of 6 to life. James Culhane's case is still open.

II. Sentencing Recommendation:

Generally, neither the New York County District Attorney's Office nor the Special Narcotics Prosecutor's Office makes a specific sentence recommendation. However, in Robin's case a number of factors demand that such a recommendation be made.

First, Robin during late 1973 and early 1974 was a major figure in New York's heroin traffic. Robin bought 15 kilograms of heroin from the Verzino organization for \$397,500 and five kilograms from Catino for \$250,000. Robin sold two 1/2 kilogram packages of heroin to Culhane for \$27,000.

Second, since ~~the inception~~ ^{ON MAXIMUM} of the Rockefeller Narcotics Law 430 defendants have received life sentences after conviction in Manhattan Narcotics Parts. No more than three of the defendants who received these sentences approach the stature in the narcotics trade of Robin and his confederates. Each of these defendants received 15 or 20 years to life. Surely, Robin deserves no better treatment than these other convicted narcotic sellers.

* A full discussion of Robin's arrest, his statements and cooperation is laid out in the People's reply memorandum enclosed as Exhibit A.

Hon. Constance Baker Motley
District Court Judge

- 7 -

December 9, 1975

Third, Robin served as a New York City Police Officer for eight years and retired with a disability from a car accident. Verzino's descriptions of Robin's activities while a police officer, Robin's testimony at the state hearings on this case, and Robin's narcotics trafficking indicate beyond any doubt his contempt for his oath of office as a police officer. Further, Robin has served for the last fourteen years as a licensed New York State bailbondsman. Again his conduct in this case is totally in abrogation of that oath of office.

Fourth, Robin's cooperation was generally of an intelligence nature and severely limited by his refusal to get involved in a case where he would have to testify. An outline of Robin's cooperation is enclosed in Exhibit A. Several times it was clear that Robin had information that could have made prosecutable cases against members of the narcotics underworld and the Criminal Justice System.

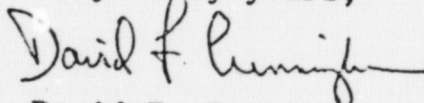
At best, the only thing Robin's cooperation was worth was allowing him to remain free for 20 months from April 1, 1974 until November 25, 1975.

Governor Rockefeller, in an April 13, 1973 memorandum to the legislature, accompanying the proposed revisions in the drug laws stated:

The only way to deter this commerce in tragedy is by measures so strong, so effective, so fully enforced, that the hard drug pusher will no longer risk his life and freedom by jeopardizing the lives of others...The hard drug pusher destroys lives just as surely and far more cruelly than the cold blooded killer. He threatens society as a whole...(McKinney's 1973 Sessions Laws, 196th Session p. 2319).

The Court has before it a defendant who is directly responsible for this "commerce in tragedy." The New York County District Attorney's Office and the Special Narcotics Prosecutor's Office recommend that the defendant receive the maximum term on each count so that he will serve at least fifteen years.

Very truly yours,



David F. Cunningham
Chief Trial Assistant District Attorney

DFC:ml
Enc.

cc: Mr. Jack Cohen
c/o Greenberg and Margolis
Bank Building
100 Evergreen Place
East Orange, New Jersey 07018

19(a)

EXCERPT FROM TAPE

CAFFREY: We got photographs, pictures, and we got and that tape is nothing compared to the other one but that is the only one we could get on that tape recorder.

LEONARD: Can I, I only took a small excerpt and you can't understand it, so it won't help, here's what I'm trying to tell you Ray, nobody gives a shit about you, you're small potatoes.

CAFFREY: As far as the dope business in concerned.

LEONARD: You're a shithead, frankly,...

EXCERPTS FROM SENTENCING HEARING

(2)

MR. COHEN: If your Honor please, to begin with I would like to address myself to some of the matters in the presentence report. I had an opportunity to see that (3) this morning. I think the record should state that although I did not have it with me at the time I was interviewing the defendant, but some of the notes about which I questioned the defendant, there seem to be matters there to which we take exception. Particularly, your Honor, the presentence report indicates, or makes the blanket statement without indicating of the source or reliability that while Mr. Robin was acting as a bondsman, he was the exclusive bank for the E. Raymond Margese bank, and I am informed by Mr. Robin that the court record will show that is not true, and for many of the people who work for that bank, and were mailed by Mr. Marconi or Mr. Pollacki, and Mr. Robin had little to do with the defendants arrested for policy violations.

THE COURT: Let me say this, Mr. Cohen. I read the presentence report carefully and there are a number of matters in there of that nature.

I do not know whether those matters are true or not, and I do not intend to hold a trial here as to

whether they are true or not. I think you should address yourself to the charges made in the indictment here against the defendant to which he has pleaded guilty. That is three counts charging him with conspiracy to violate the federal narcotics laws in the first count, and two substantive counts of violating those laws by possessing (4) heroin with intent to distribute.

Now, as to all those matters set forth in the presentence report, and while other crimes which may have been committed by the defendant, I do not think the Court can take those into consideration without a lengthy hearing as to whether they are true or false. Even then, I don't know that that is the proper thing to do.

If he is guilty of some other crimes, they are not before me.

(5)

MR. COHEN: At the outset, your Honor, I want to address myself to the fact that there has been submitted to you a long letter by the prosecutor of New York County, (6) Mr. Cunningham. I question at the outset what standing Mr. Cunningham or his office has to submit a presentence memorandum to this Court. As a matter of fact, the very one of the standards to which I have referred, and

particularly 5.3C, referring to the prosecutor in this particular case let alone one who is not connected with this Court or jurisdiction, indicates, "Unless asked by the sentencing Court or unless the product of plea discussion or agreement, the prosecutor should not make any specific recommendations as to the appropriate sentence." I think the recommendation made by Mr. Cunningham is in violation of that standard. I asked for that reason that your Honor not give any weight to it.

THE COURT: I did not recall any specific recommendation being made.

MR. COHEN: They asked your Honor to impose the maximum on all three counts. Mr. Amorosa does so as well in his opposition to the application for bail. For that reason, and other reasons I am about to detail, I suggest to your Honor that those recommendations be given no weight.

(8) THE COURT: I have a transcript of that tape here, and in one portion of the tape the gentlemen from the Drug Enforcement Agency, Mr. Caffrey and Mr. Hunt, who were also present with Mr. Leonard, expressed themselves as to what they consider the defendant's status was, big dealer, small dealer, and matters of that kind.

(9) MR. COHEN: It indicates that before there was any thought of this defendant being sentenced, that officers of the Drug Administration indicated that this defendant had a very small part in the drug traffic in New York.

MR. AMOROSA: Judge, I object to this procedure. We have not had an opportunity to look at this.

THE COURT: I have not seen it either.

(10) THE COURT: Move on to something else, Mr. Cohen.

(16) MR. COHEN: As your Honor knows, I do not want to dwell publicly on the details of that. But what I have done, however, and in order to be most subjective, I have excerpted for your Honor verbatim excerpts from the report of Mr. Caffrey, an agent for the Drug Enforcement Administration, which relates what I think are the most significant items that your Honor should consider as to what the sentence should be today. I want to hand them up if I may.

THE COURT: And this is a statement by whom?

MR. COHEN: These are excerpts or reports, official reports, made by Agent Caffrey, a supervisor in the United States Drug Enforcement Agency, and also exhibits in the Huntly Hearings.

MR. AMOROSA: I ask your Honor to disregard them unless we are given an opportunity to look at them (17) to check on the authenticity and whatever other matters that may be in there.

THE COURT: Let me ask again, Mr. Cohen, what does this relate to?

MR. COHEN: This defendant's conduct from the date of his arrest for twenty months, and what he did to show he was sorry for having committed the crimes.

THE COURT: You mean his cooperation with the government?

MR. COHEN: Yes, your Honor. I don't see how anything could be more material.

THE COURT: Suppose we let the government look at it before I do, and they can tell me what, if anything, is incorrect. Suppose you go on and we will take a recess before the government replies.

(21) THE COURT: Both of these are reports prepared by Agent Caffrey?

MR. AMOROSA: Defendant's Exhibit 1 is excerpts from various reports written by Special Agent Caffrey.

I believe that all matters of Defendant's Exhibit 1 are excerpted from various reports of Caffrey's.

THE COURT: Is that right, Mr. Cohen?

MR. COHEN: Exactly, your Honor.

THE COURT: I will receive Defendant's Exhibit 1 on this hearing.

(Defendant Robin's Exhibit 1 received in evidence.)

THE COURT: Tell us what Government's Exhibit 1 is.

MR. AMOROSA: A report prepared by Special Agent Caffrey, dated October 18, 1965 with respect to Defendant Robin. I ask your Honor to read paragraph 11.

THE COURT: Does that relate to his cooperation with the government?

(22) MR. AMOROSA: We believe it does indeed.

THE COURT: What do you say?

MR. COHEN: I say no. It is the type of material your Honor has indicated you do not want to hear about today.

(23) THE COURT: I cannot sentence him for matters he has not been convicted of.

MR. AMOROSA: We understand that, but we would like your Honor to take into consideration what we have to say also.

We do not make these allegations in bad faith or off the top of our heads. We have witnesses and documents in our possession that back the allegations up, and tapes.

(29) What the defendant is doing here by disputing what we are saying is preventing a full hearing on his culpability. That is what we want this man to have in state court, a full hearing.

(30) MR. AMOROSA: Judge, with respect to count 1, count 1 charges that the defendant conspired with others and it names a few of those others in the caption, but the others unknown from the 1st day of February, 1974 up until the date of the indictment, and I believe the federal indictment was returned in May, Judge. I would not only have concluded -- that is our proof if we had gone to trial -- it would not only have concluded proof with respect to the two substantive counts, the second and third, but with respect to count 1, all the other transactions that the defendant engaged in from this period of time, from the 1st day of February, 1974, and the witness Verzino would have testified that he distributed multigrams of heroin to this defendant, and Special Agent Caffrey, that the defendant told him

(31)
subsequent to the defendant's arrest that prior to the arrest he had, in fact, \$250,000 from another person by the name of Cotino who was an associate of Verzino and Mario Perna. And Perna and Verzino were partners.

THE COURT: These were the men convicted before Judge Cooper?

MR. AMOROSA: Witnesses before Judge Cooper, and they would have testified against Robin. James Culhane would have testified against the defendant, Robin, that he purchased heroin, and he would have produced records seized from Perna and Verzino at the time of the arrest in which Robin's name was indicated, and showing association, and tapes worn by James Culhane, I believe, at the time he was doing business with this defendant on the street which would further corroborate our position that this defendant conspired with others from February 1, 1974 to May to distribute multikilogram quantities of heroin. And going far beyond what this defendant admitted to in count 2 and count 3.

THE COURT: Well, on that basis I believe I could consider it as the evidence the government would have offered with respect to count 1.

(44)

MR. JOHNSON: I apologize for being late, your Honor. I would like to say, your honor, that this city has a great many problems, financial, poverty, et cetera, but there is no problem as bad as the narcotics problem.

You have a defendant before you awaiting sentence. This defendant, at the time he committed these acts and admitted that he committed these acts, was a retired New York City police officer, and also an official who was sworn to uphold the laws by virtue of taking his oath as a bail bondsman. This defendant also, your Honor, is not like the normal drug peddler who might sell drugs to support his own habit, but may be that one-shot adventurer who is going to make a killing and get out of the market. This defendant, Mr. Robin, was in the business. That illusive Mr. Big who sold narcotics for personal gain and distributed it into the communities in the city of New York. I would ask this Court to sentence the defendant to a maximum term on each count to run consecutively.

THE COURT: Do you have anything else, Mr. Amorosa?

MR. AMOROSA: Judge, I think what Mr. Cohen is going to say when he gets his opportunity for rebuttal

(45)

is that the defendant Robin denies everything, and he denies what we claim he is, and the only thing he is is what he admitted to your Honor at the time of plea. And he is going to submit to your Honor that your Honor should not consider what the government has advanced. But we say that your Honor has an absolute legal right to consider those other matters under the authority in this circuit, as well as every other circuit. And that is that a man does not have to be convicted of a crime before your Honor can consider what the government presents in terms of the applicable sentence.

We submit if this man had gone to trial we would have proven what we are now alleging to be the facts. Please consider what we submit to you today, and if your Honor does not desire to consider it, we again ask your Honor to accept our nolle in this case so that we can have a full airing of the facts at a state court in a trial.

That is all.

(51) THE DEFENDANT: Yes, your Honor, I do. Number one, what I have admitted to I am standing here before you to be sentenced on. What Mr. Johnson, Mr. Cunningham and Mr. Amorosa have stated are lies.

(53) THE COURT: Well, it seems to me, Mr. Robin, that after spending a great deal of time on this matter.

(54)
and reviewing what occurred at the state court hearing
and the letter from Mr. Cunningham and your exhibit,
Defendant's Exhibit 1, which you handed up this morning,
it seems clear to me that you were involved with the
drug traffic in a major way.

It seems to me that the only way you get to
know somebody like Anthony Verzino or Mario Perna or
people like that who you indicated supplied drugs to
Alex Pulpas is to be involved with such people.

(59)

THE COURT: With respect to the prison term
thus imposed which totals 30 years and the fines which
total \$75,000, it is the judgment of the Court that the
defendant serve a parole period of three years.

(61)

THE COURT: In your case particularly the
sentence is deserved because you were a former New York
City policeman whose duty it was to uphold the law. You
have an opportunity that very few of us have to see
what heroin has done to this city firsthand. And as a
bail bondsman you had more opportunity to see people
such as those who have been mentioned here who have
reaped huge profits from the sale of narcotics, and for
all of those reasons the Court has imposed the sentence
that it has in your case.

Service of three ③ copies of the within
is admitted this 11th May 1976

ROBERT B. FISK
SOL. DIST. OF N. Y.

United States Attorney Southern District